

## **Information Regarding Escrow Accounts**

Many questions arise about the broker's escrow account. Below is the Kentucky Revised Statute that covers this subject. Following the statute are some commonly asked questions and answers. 324.111 Escrow account of broker – Interest – Audit – Contract deposit release – Separate property management accounts.

- (1) A principal broker shall maintain an escrow account or accounts, separate from the individual or office account, in which all contract deposits and money belonging to others shall be deposited without unreasonable delay. The escrow accounts shall be maintained within the State of Kentucky and shall be identified to the commission in writing.
- (2) The broker may place the deposit in an interest-bearing account or instrument. The interest earned shall accrue to the person agreed to in writing by all parties.
- (3) No checks shall be drawn against uncollected deposits in the escrow account.
- (4) None of the contract deposits shall be withdrawn until the contract has been terminated by performance, by agreement in writing between all parties, or by order of a court of competent jurisdiction, except as permitted in subsection (6) of this section.
- (5) Upon licensure and each renewal, the principal broker shall sign a permit giving the commission the permission to audit all his escrow accounts.
- (6) Upon being notified that one (1) or more parties to a contract intends not to perform, the broker may release the contract deposit as provided in the contract or if no provision is made in the contract, the broker may initiate the release process. The release process shall require the broker to notify all parties at their last known address by certified mail that the contract deposit shall be distributed to the parties specified in the letter unless all parties enter into a written mutual release, or unless one (1) or more of the parties initiate litigation within sixty (60) days of the mailing date of the certified letter. If neither buyer nor seller initiates litigation or enters into a written release within sixty (60) days of the mailing date of the certified letter, the broker may release the deposit to the party identified in the certified letter without penalty under this section and without civil liability in the courts of the Commonwealth of Kentucky.
- (7) All principal brokers whose companies engage in property management shall maintain property management accounts separate from all other accounts or specifically indicate in all escrow records if funds are property management funds.
- (8) A broker or sales associate who owns rental property shall not be required to use the principal broker's management account for the rental property, unless required by the principal broker.

## **Commonly Asked Escrow Account Questions**

### **(1) Am I required to have an escrow account?**

KRS 324.111 requires all principal brokers maintain an escrow account. This account must be separate from the office and/or individual account.

### **(2) What money goes in an escrow account?**

All contract deposits and money belonging to others must be deposited in an escrow account.

### **(3) What records should be kept of my escrow account activity?**

Accurate records should be kept of all deposits, withdrawals, checks written, and any other activity which effects the escrow account.

### **(4) What is a contract deposit?**

A contract deposit means money delivered to a licensed agent as part of an offer to enter a contract for the sale of real property, once the offer or any counteroffer is accepted and an executory contract exists. (201 KAR 11:011)

### **(5) How quickly must I deposit contract deposits and money belonging to others in my escrow account ?**

KRS 324.111 requires deposits be made without unreasonable delay. Unreasonable delay is defined at 201 KAR 11:011 as within three (3) working days of the creation of the executory contract for the sale of real property.

### **(6) May my escrow account be placed in an interest-bearing account?**

Yes. Your escrow account may placed in an interest bearing account.

### **(7) Who gets to keep escrow account interest?**

The interest earned goes to the person agreed to in writing by all parties. The broker can keep the interest if the consumer agrees in writing.

If you have legal questions on escrow accounts or other issues that were not answered, please send them in writing to Lee Harris, General Counsel, Kentucky Real Estate Commission.